



MEMORANDUM

TO: James Malloy, Town Manager
FROM: Mark J. Corr, Chief of Police
DATE: June 25, 2020
SUBJECT: Crosswalk: Lexington Police "Use of Force – Defensive Actions" Policy and "#8cantwait" Initiative

Quote from the forward of the Lexington Police Policy Manual

"The police officer on the beat or in the patrol car makes more decisions and exercises broader discretion affecting the daily lives of people every day and to a greater extent, in many respects, than a judge will ordinarily exercise in a week. No law book, no lawyer, no judge can really tell the officer on the beat how to exercise this discretion perfectly in every one of the thousands of different situations that can arise in the hour to hour work of the police officer.

"Yet we must recognize that we need not choose between no guidelines at all and perfect guidelines. There must be some guidance by way of basic concepts that will assist the officer in these circumstances."

US Supreme Court Chief Justice Warren Burger

Putting 'Use of Force' policy in context

Any review of the Lexington Police Department's "Use of Force – Defensive Actions" policy 41B cannot be done in a vacuum. This policy is one of approximately 110 Lexington Police policies that govern a police officer's conduct. Policies that govern ethics, discipline, harassment, performance evaluations as well as internal affairs and maintaining professional standards can all be found on the Lexington Police Department's webpage under "About the Lexington Police Department."

Furthermore, the Commonwealth's Supreme Judicial Court and the Legislature have set very high standards for policing. Case law that controls police actions as it pertains to arrest, search and seizure, and other actions are the strictest in the country. For those interested in further reading, some materials that are studied by police officers and are used for promotional exams: Criminal Law 2020 and Criminal Procedure 2020 by Paula Heagney; Motor Vehicle Police Manual 2020 and Juvenile Law Police Manual 2020 by J.S. Sheft.

#8cantwait and Lexington Police Policy Manual

The initiative “#8cantwait” emphasizes the importance of eight guiding principles that reduce the likelihood of excessive force by police officers. The following crosswalk is a guide to where the Lexington Police use of force guidelines align to these eight principles.¹

1) Ban chokeholds & strangleholds

Page 2, Definitions, #4.

“Lethal Force: *is the degree of force likely to result in death or serious bodily injury. This includes but is not limited to the use of department-approved firearms. Strangulation and choke holds (or any action that restricts the airway and/or carotid arteries) is deadly force.”*

Page 3 to Page 6, Progression of Force

Lexington has a use of force continuum or ‘use of force model’ that mirrors the training provided by the Commonwealth’s Municipal Police Training Committee (MPTC). In the intermediate sections (Level 3 and Level 4 on page 5) the restraints taught to officers are identified. I can attest that since attending the police academy in 1983, the Commonwealth and Lexington has never taught strangle or choke holds. The training does emphasize the importance of avoiding face, neck, and spinal strikes or restraints.

Page 10, H. Lethal Force, item #3f

A ban of holds or defensive action must consider a reality in police work, as covered by this language:

*“Officers who find themselves weaponless and/or prevented from having access to an issued weapon **and** confronted with deadly force may defend themselves and/or others by whatever means necessary to survive the encounter.”*

2) Require De-escalation

De-escalation is a required learning point in the MPTC recruit academy and is required in annual in-service training.

The value and dignity of human life is captured in the opening paragraphs of the Use of Force policy:

“The Lexington Police Department places the highest value on the life and safety of the public and our officers. A reverence and respect for the dignity of all persons and the sanctity of human life shall be reflected in all training, leadership, and procedures of the Lexington Police Department. The Department’s regulations, policies, and procedures

¹ Lexington adopts model policies made available by the Municipal Police Institute a division of the Massachusetts Chiefs of Police Association. We then edit the policies to meet Lexington’s expectations.

are designed to ensure that this value guides officers in their use of force. All officers of the Lexington Police Department will use only the force necessary to accomplish lawful objectives [1.3.1]².

Since officers will encounter a wide range of situations, they must be prepared to utilize a range of force options that are reasonable to maintain control, deescalate and avoid physical confrontation, overcome resistance to the officers' lawful instructions, and to protect themselves and community members while minimizing the potential for injuries.

Due to the uncertainty and rapidly changing nature of these situations, no written policy can offer definitive answers to every situation in which the use of force might be appropriate. Rather, this policy's guidelines and Municipal Police Training Committee guidelines will provide officers with a basis on which to utilize sound judgment in making reasonable and prudent decisions."

Throughout the policy, de-escalation is an important strategy and can be found on:

Page 3, B. Progression of Force, item #1 and Page 6, D. Use of Non-Lethal Force, Item #1 both state:

"The officer's response options within each of the five force levels identified in the Use of Force Model are not necessarily listed in the order of use and/or need. The officer should de-escalate, stabilize, or escalate his/her response based upon his/her risk assessment and the perceptions of the subject's degree of compliance or non-compliance."

Page 10, Lethal Force, item #3c.

*"Officers **shall** give voice commands prior to discharging a firearm if time and/or circumstances allow."*

The Department has an entire policy 41-O dedicated to "Responding to the Mentally Ill" which seeks to guide officers to recognize mental health as a contributing factor to potential police confrontations. De-escalation is an important strategy for officers to successfully manage these difficult situations.

3) Require warning before shooting.

Lexington Police policy is consistent with the legal standards established by the United States Supreme Court and the Commonwealth's Supreme Judicial Court, in particular Graham v. Connor. In this case, an officer's use of force must be objectively reasonable.

See page 2, Definitions, item #9.

² 1.3.1 is a Massachusetts Police Accreditation Commission, Inc. mandatory standard that requires, "A written directive states personnel will use reasonable force when force is used to accomplish a lawful objective."

“Objectively Reasonable: *in determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the known circumstances including, but not limited to; the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the community.”*

Page 8, Less Lethal Force, Item 4e also requires verbal warnings.

“e. When practical, other officers should be advised of the deployment prior to the discharge of the shotgun -- the officer firing the less lethal munition shall announce in a loud voice, **“Bean Bag”** immediately prior to discharging the weapon.”

Page 8, Less Lethal Force, Item 4f.

“f. During the deployment of the less lethal munitions, the officer in charge of the incident should constantly evaluate the option selected against changing circumstances.”

Page 10, Lethal Force, item #3c.

“Officers **shall** give voice commands prior to discharging a firearm if time and/or circumstances allow.”

Page 10, Lethal Force, item 3b.

“Officers **shall not** discharge their firearms to threaten or subdue persons whose actions are destructive to property or injurious only to them **unless** such actions are an imminent threat of death or serious bodily injury to the officer or others.”

Voice instructions and warnings are part of all training that may involve an arrest and all levels of the use of force model.

4) Requires exhaust all alternatives before shooting

Page 1, third paragraph.

“Due to the uncertainty and rapidly changing nature of these situations, no written policy can offer definitive answers to every situation in which the use of force might be appropriate. Rather, this policy’s guidelines and Municipal Police Training Committee guidelines will provide officers with a basis on which to utilize sound judgment in making reasonable and prudent decisions.”

The use of alternatives has been addressed in previous sections (Page 3, B. Progression of Force, item #1) and will also be addressed in “Require use of force continuum” in #8cantwait item 7 below.

Page 10, item 3a.

“Officers **may** discharge their firearms **only** when doing so will not unreasonably endanger innocent persons.”

Page 10, item 3d.

“Officers **shall not** fire warning shots. [\[1.3.3\]](#)”

5) Duty to intervene

Page 11, item J. Duty to Act.

- “1. Officers/Employees have a duty to prevent and stop illegal and inappropriate use of force that violates any applicable law and/or Department policy. Any officer/employee who observes an officer preparing to or using force that is illegal, excessive, or otherwise inconsistent with this policy must, absent extraordinary circumstance, do whatever he/she can to interrupt the flow of events to stop unlawful, excessive, or inappropriate actions. Supervisors observing such a violation must issue a direct order immediately to stop the action.
2. Officers/Employees have a duty to report the use of force that is illegal, excessive, or in violation of this policy. A supervisor will be notified verbally as soon as possible. Furthermore, a written report will be submitted to the Chief of Police.
3. No one is permitted to retaliate, in any form, against an officer/employee who intercedes or reports a violation of this policy, or who cooperates with an investigation into a possible violation of this policy.”

Although #8cantwait may not reference medical intervention, the Lexington Police policy requires officers to provide immediate medical attention after using force of any kind where there is an injury or complaint of pain.

6) Ban shooting at moving vehicles

Page 10, Lethal Force, item #3e.

*“Officer **shall not** fire at or from a moving vehicle **unless** there is imminent threat of death or serious injury to the officer or others **and** there is no opportunity to escape the path of the moving vehicle.”*

The Department’s policy governing “High Speed Pursuits” 41-D further addresses shooting at moving vehicles.

“Use of Firearms

- a. Discharging a firearm at a moving vehicle by an officer is prohibited, except to defend said officer or another when the occupant of the pursued vehicle is employing deadly force which the officer reasonably perceives as an imminent threat of death or physical injury, and the officer reasonably believes that [s]he will not endanger innocent persons.
- b. Shooting at a fleeing vehicle or a vehicle that is going away from the officer and is no longer an immediate threat is prohibited. Under such circumstances, officers should be aware of the potential inability of a bullet to penetrate metal or glass surfaces of an automobile and the likelihood of ricocheting bullets causing injury to innocent persons.
- c. The use of firearms during a pursuit shall be governed by Departmental policies on "Use of Force" and "Firearms."

7) Require use of force continuum

Starting on page 3 through page 6, the ‘Progression of Force’ or “Use of Force Model” outlines the force continuum.

“Progression of Force: [\[1.3.1\]](#)

1. The officer’s response options within each of the five force levels identified in the Use of Force Model are not necessarily listed in the order of use and/or need. The officer should de-escalate, stabilize, or escalate his/her response based upon his/her risk assessment and the perceptions of the subject’s degree of compliance or non-compliance.
2. The force tactics listed in each of the five force levels identified in the Use of Force Model are those tactics in which the officers are trained. The Lexington Police Department recognizes that there are other methods and tactics that can be used at each of the levels of authority. If a tactic is used that is not listed, it must be objectively reasonable as it relates to the officer’s risk assessment and the subject’s action. “

C. Use of Force Model:

LEVEL ONE: The Compliant Subject

LEVEL TWO: The Resistant (passive) Subject

LEVEL THREE: The Resistant (active) Subject

LEVEL FOUR: The Assaultive (bodily harm) Subject

LEVEL FIVE: The Assaultive (serious bodily harm, death) Subject

[The chart for each level is available in the policy on page 4, 5 and 6]

8) Require comprehensive reporting

Page 11, “Defensive Action and Use of a Firearm Reporting” requires officers to submit reports when force is used. The blue numbers represent accreditation standards as defined by Massachusetts Police Accreditation Commission, Inc. All reports are reviewed by the Chief of Police.

“An officer shall immediately notify and fully inform the Commanding Officer, followed by a written report, whenever he/she:

- a. Discharges a firearm for any reason except for training or competition on an approved range. [1.3.6(a)]
- b. Takes **any** action that results in, or may result in claims of, injury or death of another person. [1.3.6(b)]
- c. Takes a defensive action to overcome a subject's resistance to a lawful police purpose. This typically will not include verbal commands, mere touching, escorting, and handcuffing of compliant individuals. [1.3.6(d)]
- d. Draws and points a firearm. [1.3.6(c)]”

Furthermore, on page 11, section K, “Written Reports” the policy further explains what is expected in a report. On page 12-13, Section K, item #5 requires the additional submission of a “Defensive Action Data Report”.

“DEFENSIVE ACTION DATA REPORTS (DADR) will be used to collect statistical data on the demographics and types of incidents where force was shown/used for supervisory review and training.

- a. Each officer who is directly involved in a defensive action will complete a DADR. Witness officers are not required to complete a DADR.*
- b. One DADR will be submitted for each person upon whom force was shown/applied. When multiple individuals are involved in an incident, each person is unique and the defensive actions identified in the DADR should be specific to that person.*
- c. DADR data is based on the best information known to the officer. When checking off conditions, pick the best answer that fits the incident. Descriptive data should be brief.*
- d. The DADR is not a substitute for a full incident report and should be given priority after the incident report has been submitted. Each completed DADR will be reviewed by a Commanding Officer. “*

Policy 52-A “Internal Affairs” also requires the investigation and documentation of all complaints.

Page 3, Internal Affairs Function.

“Internal Affairs Function. The principal functions of the internal affairs component includes:

a. Investigating all complaints, regardless of the source, which allege misconduct by Department employees and/or involve complaints challenging Department policies, rules and/or regulations.”

Lexington Making Improvements

Lexington has taken some very positive steps to improve police services:

1. With union and Town Meeting support, Lexington left the Massachusetts Civil Service hiring process in 2019. The Civil Service system was an impediment to the Town of Lexington finding diversified candidates. The bureaucracy of Civil Service could also force communities to hire candidates that did not fit the profession. As we enter the second year of being non Civil Service, it is our continuing goal to attract a mature, qualified and diversified candidate pool.
2. For 10 years, Lexington has met the Massachusetts Police Accreditation Commission’s standards for professional policing. These standards are routinely updated by the Commission for Accreditation of Law Enforcement Agencies (CALEA) founded by the International Association of Chiefs of Police (IACP), the National Organization of Black Law Enforcement officers (NOBLE), the Police Executive Research Forum (PERF) and the National Sheriffs Association (NSA). Lexington will be inspected for reaccreditation in 2022.
3. Almost 20 years ago, Lexington abandoned the Civil Service multiple choice testing for promotion in favor of full assessment centers. Private vendors skilled in the testing and evaluation of candidates use written and verbal exercises before a panel of qualified assessors to measure a candidate’s job knowledge and understanding of police supervision. Lexington now requires the police policy manual to be part of the testing material.
4. Lexington has used performance evaluations since the 1970’s to measure and improve upon officer performance. Officers are rewarded through the Quinn Bill and educational incentives for associates, bachelors and master’s degree in law, criminal justice, sociology and/or psychology.
5. All Lexington Police policies are posted on the website for public review and comment. We continue to strive to achieve best practices such as adopting a full policy on “Bias Based Profiling” 41-H to achieve procedural justice. Public comment or model language may be sent to policeinfo@lexingtonma.gov or to Chief Mark Corr at mcorr@lexingtonma.gov.